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IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

Nos. 76-1471, 76-1521, 76-1595, 76-1604, 76-1624, 76-1685

FEDERAL COMMUNICATIONS COMMISSION, *et al.*,
Petitioners,

v.

NATIONAL CITIZENS COMMITTEE FOR BROADCASTING, *et al.*, *Respondents.*

On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

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OPPOSITION TO MOTION OF THE OFFICE OF COMMUNICATION OF THE UNITED CHURCH OF CHRIST, THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE AND THE AMERICAN CIVIL LIBERTIES UNION FOR LEAVE TO FILE BRIEF AMICI CURIAE

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The National Association of Broadcasters ("NAB"), petitioner in No. 76-1595, hereby opposes the motion of the Office of Communication of the United Church of Christ ("UCC"), the National Association for the Advancement of Colored People ("NAACP") and

the American Civil Liberties Union ("ACLU") for leave to file a brief *amici curiae.*

The NAB submits that movants should be denied leave to file a brief *amici curiae* because they have failed to meet the standards of Rule 42 of this Court. The NAB's refusal to consent to the filing of a brief by the movants has now been reinforced by the contents of their proffered brief, which improperly relies on matters outside the record.

The UCC, NAACP and ACLU allege that the *Second Report and Order* in Docket 18110[1] has been improperly applied by the FCC in three license renewal proceedings involving WSYR-TV, Syracuse, New York;[2] WAPI-TV, Birmingham, Alabama;[3] and WSB-TV, Atlanta, Georgia.[4] Relying on certain alleged facts in those three proceedings—none of which are before this Court—movants claim that the FCC should have granted relief to the petitioners therein. The asserted "facts" include allegations concerning media concentration in the three markets involved, monopolistic intent of the licensees of the three stations, and the quality of their stations' programming and employment practices. The expressed purpose of

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[1] 50 F.C.C.2d 1046, reconsideration, 53 F.C.C.2d 589 (1975).

[2] Newhouse Broadcasting Corp., 51 F.C.C.2d 336 (1975), *appeal pending sub nom.* Syracuse Coalition for the Free Flow of Information in the Broadcast Media v. FCC, D.C. Cir. No. 75-1308; Newhouse Broadcasting Corp., 62 F.C.C.2d 271 (1977), *reconsideration pending.*

[3] Newhouse Broadcasting Corp., 59 F.C.C.2d 218 (1976), *reconsideration denied,* 61 F.C.C.2d 718 (1976), *appeal pending sub nom.* Magic City Communications Coalition v. FCC, D.C. Cir. No. 76-2088.

[4] Petition to deny pending before FCC.

the movants' *amici* brief is to enable this Court to consider the facts in these other proceedings in its evaluation of the issues in the consolidated proceedings before the Court.

The NAB submits that the objective of the *amici* brief is improper and prejudicial. It is an elementary and long-established principle that the Supreme Court will not consider matters which are outside the record. *E.g., New Haven Inclusion Cases,* 399 U.S. 392, 450 n.66 (1970); *Thomson* v. *Gaskill,* 315 U.S. 442, 446 (1942); *Meeker & Co.* v. *Lehigh Valley R.R.,* 236 U.S. 412, 431 (1915); *Smith Middlings Purifier Co.* v. *McGroarty,* 136 U.S. 237, 240 (1890); *Bechtel* v. *United States,* 101 U.S. 597, 600 (1879); *Kerr* v. *Clampitt,* 95 U.S. 188, 189-90 (1877); *Holmes* v. *Trout,* 32 U.S. (7 Pet.) 171, 210 (1833); *Thornton* v. *Carson,* 11 U.S. (7 Cranch) 596, 601 (1813). That principle is particularly applicable here since movants refer to the records in proceedings to which the NAB is not a party and which are still in the process of adjudication. Thus, were the motion granted, the NAB would be unable adequately to respond to movants' factual allegations, even if it were otherwise procedurally appropriate to do so.

The FCC developed an extensive record in Docket No. 18110. It is that record which is now before this Court. The records of the pending proceedings to which movants refer, and the asserted facts from those records on which they rely, are not before the Court, and should therefore not be considered in resolving the present consolidated proceedings. Since the sole purpose of the *amici curiae* brief of UCC, NAACP and ACLU is to place before this Court matters which

are outside the record, the NAB respectfully submits that movants' motion for leave to file that brief should be denied.

Respectfully submitted,

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